

Jeffrey L. Berhold, Ga. Bar No. 054682

jeff@berhold.com

JEFFREY L. BERHOLD, P.C.

1230 Peachtree St., Suite 1050

Atlanta, GA 30309

Telephone: 404.872.3800

Attorney for Non-Party

ALLIANCE HEALTHCARE PARTNERS LLC

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SURGICAL INSTRUMENT SERVICE
COMPANY, INC.,

Plaintiff/
Counterclaim-Defendant

vs.

INTUITIVE SURGICAL, INC.,

Defendant/
Counterclaim-Plaintiff.

Case No. 3:21-CV-03496-AMO
Hon. Araceli Martínez-Olguín
Courtroom 10

**DECLARATION OF JEFF
BERHOLD IN SUPPORT OF
JOINT ADMINISTRATIVE
MOTION TO CONSIDER
WHETHER ANOTHER PARTY'S
MATERIAL SHOULD BE
SEALED PURSUANT TO CIVIL
LOCAL RULE 79-5(f) (ECF No.
393)**

1 I, Jeffrey L. Berhold, declare as follows:

2 1. I am over the age of eighteen years old and am counsel for non-party
3 Alliance Healthcare Partners LLC (“Alliance”). Unless otherwise indicated, I state
4 the following of my own personal knowledge and, if called upon to do so, I could and
5 would testify competently to the following.

6 2. Pursuant to Civil Local Rules 7-11 and 79-5(f), Alliance submits this
7 declaration in support of the JOINT ADMINISTRATIVE MOTION TO CONSIDER
8 WHETHER ANOTHER PARTY’S MATERIAL SHOULD BE SEALED
9 PURSUANT TO CIVIL LOCAL RULE 79-5(f) (ECF No. 393) relating to proposed
10 trial exhibits.

11 3. Alliance prepared a 510(k) application with the FDA (K210478) on
12 behalf of non-party Restore Robotics Repairs LLC (“Restore”).¹ The 510(k)
13 application concerns the development, testing, and regulation of proposed methods
14 for repairing EndoWrists. After clearance, Alliance conveyed the 510(k) clearance to
15 Restore through the sale of the 510(k) applicant Iconocare Health Solutions. Neither
16 Alliance nor Restore has any interest in this case.

17 4. I represented Alliance and Restore in *Restore Robotics v. Intuitive*
18 *Surgical* and represent Alliance and Restore regarding the confidentiality of their
19 documents and information in this case. I have conferred with the chief executive
20 officers of Alliance and Restore regarding TX 1741. Neither Alliance nor Restore has
21 disclosed the contents of the TX 1741 to any third party because it would allow
22 competitors to make use of Alliance and Restore’s extensive efforts to commercialize
23 repaired EndoWrists. Disclosure of the exact nature, scope, and terms of their
24 relationship would provide competitors with a headstart in their own efforts. Thus,
25 there are compelling reasons maintaining the confidentiality of that information

26 _____
27 ¹ Alliance filed the 510(k) application in the name of Iconocare Health, which was
28 acquired from Alliance by Restore.

1 produced by a third party in litigation.

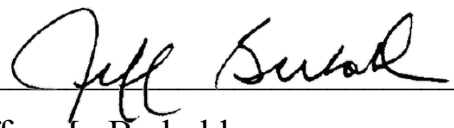
2 4. Consistent with industry practice, Alliance and Restore have always
3 maintained the details of their business relationship within a closely held group of
4 individuals on a need-to-know basis within the companies. Alliance and Restore have
5 invested significant manpower and monetary investment in developing their business
6 relationship. Disclosure of the terms and conditions of that relationship would give
7 substantial assistance to potential competitors – allowing them to avoid the time and
8 cost of assessing the risk, negotiating the terms, and creating a partnership for
9 developing the technology and requesting the clearance to compete with Alliance and
10 Restore in repairing or remanufacturing EndoWrists.

11 5. Alliance and Restore request the full sealing of the following email
12 communication between Alliance and Restore regarding the terms and conditions of
13 their business relationship:

14 **TX 1741 (AHP000701 – AHP000702) (Dkt. 393-2)**

15 I declare under penalty of perjury under the laws of the United States of
16 America that the foregoing is true and correct.

17
18 Executed: January 5, 2025


Jeffrey L. Berhold